UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

BUDDY EUGENE STRUCKMAN,
Petitioner,

Case No. 1:20-cv-737
Judge Timothy S. Black
Magistrate Judge Michael R. Merz

v.

WARDEN, RICHLAND CORRECTIONAL INSTITUTION,
Respondent.

PETITIONER'S OBJECTIONS TO THE MAGISTRATE JUDGE'S JULY 16, 2026 DECISION AND ORDER (ECF NO. 103)

Petitioner, **Buddy Eugene Struckman**, respectfully submits these **Rule 72(b) Objections** to Magistrate Judge Merz's July 16, 2026 Decision and Order (ECF No. 103), pursuant to Fed. R. Civ. P. 72(b) and 28 U.S.C. § 636(b)(1). Petitioner requests **de novo review** of the denial of the Renewed Rule 7 Motion to Expand the Record (ECF No. 94) and seeks **inclusion of Exhibit A-9**, which is necessary for meaningful review of the Traverse.

As a **pro se litigant**, Petitioner requests liberal construction under **Haines v. Kerner**, 404 U.S. 519, 520–21 (1972), **Franklin v. Rose**, 765 F.2d 82, 84–85 (6th Cir. 1985), and **Jourdan v. Jabe**, 951 F.2d 108, 110 (6th Cir. 1991). Petitioner acknowledges a procedural omission in failing to include post-2011 precedent in the renewed motion. This omission was an **honest mistake** by a pro se litigant navigating complex habeas doctrine without counsel, **not a strategic omission**. Upon recognizing the defect, Petitioner immediately corrected it in these Objections

by supplying the controlling post-Pinholster Supreme Court and Sixth Circuit authority required for proper Rule 7 analysis.

Petitioner further seeks inclusion of **Exhibit A-9** because the **operative Traverse (ECF No. 89)** expressly relies on the suppressed gun-owner information as part of Petitioner's **Brady**, **Kyles**, **Napue**, **Giglio**, **Schlup**, and **Jackson** arguments. The Traverse identifies Exhibit A-9 as related to material exculpatory evidence at PageID 5079–5084, stating that "dangerous-ordnance owner information was suppressed… citing Brady," that the suppressed ownership records "directly negate the element the State was required to prove," and that the State's constructive-possession theory collapses "when the full record is considered, including suppressed ownership records (Attachment A-9, PageID 4599)." Because the Traverse is part of the **operative pleading** under Fed. R. Civ. P. 8(b) and 15(c), and because the Traverse **cannot be evaluated on its own terms without Exhibit A-9**, Petitioner respectfully requests expansion of the record so that the District Judge may conduct meaningful **de novo review** under Rule 72(b).

Finally, Petitioner notes that **Judge Black has already exercised discretion to bypass Pinholster** in this case (Doc. 80, PageID 4957), holding that Attachments A-2, A-3, A-7, and A-8 would be considered "for all legally relevant purposes." **Exhibit A-9 stands in the identical procedural posture**, and Petitioner respectfully requests similar treatment here.

OBJECTION 1: The Magistrate Judge Erred Under Post-2011 Precedent Because Pinholster Does Not Categorically Apply to Suppressed Evidence or Gateways. Magistrate Judge Merz denied expansion on the ground that Petitioner failed to cite post-Pinholster authority, but Petitioner now fully satisfies that requirement by providing controlling Supreme

Court and Sixth Circuit precedent establishing that *Cullen v. Pinholster*, 563 U.S. 170 (2011), does **not** bar new evidence where the State suppressed material evidence, where a *Schlup* actual-innocence gateway is invoked, or where review proceeds under § 2254(d)(2). Post-2011 Supreme Court decisions—including *Wearry v. Cain*, 577 U.S. 385 (2016) (Brady materiality requires evaluating suppressed evidence holistically), *Turner v. United States*, 582 U.S. 313 (2017) (suppressed Brady evidence must be reviewed even if the state court never saw it), *McQuiggin v. Perkins*, 569 U.S. 383 (2013) (Schlup gateway requires federal courts to consider new evidence outside the state record), *Brumfield v. Cain*, 576 U.S. 305 (2015) (§ 2254(d)(2) permits review beyond the state record when factual findings rest on an incomplete or suppressed record), and *Hinton v. Alabama*, 571 U.S. 263 (2014) (federal courts must evaluate undisclosed factual evidence to protect due process)—all confirm that Pinholster's record limitation is not absolute. Sixth Circuit authority is equally clear: *Genesis Hill v. Mitchell*, 842 F.3d 910, 923 (6th Cir. 2016), holds that when state action prevents merits adjudication, federal review is de novo and Pinholster does not apply; *In re Wogenstahl*, 902 F.3d 621, 628–29 (6th Cir. 2018), holds that Pinholster cannot be used as a shield when the State suppressed critical factual predicates; and Judge Black's own law-of-the-case ruling (Doc. 80, PageID 4957) already bypassed Pinholster by allowing "full consideration" of Attachments A-2, A-3, A-7, and A-8. Exhibit A-9 stands in the **identical procedural posture**, and the State never adjudicated the gun-owner Brady claim on the merits because it actively suppressed the evidence. Under *Hill*, *Wogenstahl*, and Judge Black's prior order, Pinholster does **not** bar Exhibit A-9, and the Magistrate Judge's categorical exclusion is clearly erroneous.

OBJECTION 2: The Magistrate Judge Erred by Confusing the Evidentiary Value of Exhibit A-9 with Threshold Authentication

The Magistrate Judge concluded that A-9 "does not prove anything about possession" because a firearm could be borrowed or stolen (ECF 103, PageID 5450). This misstates the purpose of A-9.

- A-9 is **not** offered to prove ownership.
- A-9 is offered to prove **suppression, diligence, and state-exclusive custody**.

Exhibit A-9 consists of official DOJ correspondence (OIP Appeal No. A-2024-00633) confirming that the requested federal gun-trace records explicitly exist but are protected under **5 U.S.C. § 552(b)(3)** and the **Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. No. 112-55)**. Because federal law blocks inmate access but permits law enforcement retrieval, this documents state-exclusive control over the suppressed evidence, satisfying the *Kyles v. Whitley* prosecution duty-to-learn analysis. Rule 7 requires only that evidence be relevant to the underlying constitutional claim, not that it single-handedly prove a complete defense.

OBJECTION 3: The Magistrate Judge Clearly Erred in Finding No Pleaded Gun-Owner Brady Claim

Magistrate Judge Merz concluded that "there is nothing… which the Court could liberally construe to find Petitioner had made a 'gun-owner information claim'" (ECF 103, PageID 5449). That finding is clearly erroneous because the Amended Petition explicitly pleads *Brady v.*

Maryland, implicitly pleads Brady through multiple constitutional frameworks, and factually depends on Brady-type exculpatory ownership evidence across **all four Petition Grounds**. The Magistrate Judge's conclusion is therefore contrary to the record and must be rejected.

First, the Magistrate Judge misread the Petition's pagination. He stated that "page 5 is PageID 192" and "contains no pleaded grounds." This is factually incorrect. PageID 192 is the cover page; manual page 5 corresponds to PageID **196**, which contains Section 12(a)(5) expressly invoking *Brady v. Maryland*, 373 U.S. 83, and *Ashe v. Swenson*, 397 U.S. 436. This is a pleaded Brady foundation tied to exculpatory evidence and double-jeopardy factual preclusion. Under *Haines v. Kerner*, 404 U.S. 519 (1972), *Franklin v. Rose*, 765 F.2d 82 (6th Cir. 1985), and *Erickson v. Pardus*, 551 U.S. 89 (2007), the Court must liberally construe this language as asserting a Brady-based exculpatory-evidence claim—one that necessarily includes the suppressed gun-owner information later detailed in Attachment A-9.

Second, the Petition pleads Brady across three additional Grounds, making the Magistrate Judge's finding impossible.

Ground Two (PageID 195–196) alleges a knowingly-element defect, prosecutorial misconduct, errant facts, Motion in Limine error, Fourth Amendment violations, and failure to advise on Brady material (PageID 201). These claims cannot be adjudicated without ownership evidence because the "knowingly" element under R.C. 2923.17(A) cannot be proven if the ordnance belonged to someone else.

Ground Three (PageID 196–200) explicitly cites *Brady* three times and challenges Crim.R. 33 factual findings, double-jeopardy factual preclusion, Giglio-based miscarriage of justice,

suppression of exculpatory evidence, and municipal acquittal factual findings—all of which turn on ownership and access.

Ground Four (PageID 200–203) pleads Brady twice, alleging unfair trial, ineffective assistance (Newburger, Hoyt), equal protection, due process, competency, and failure to advise Petitioner of Brady material (PageID 201, 203). These claims necessarily encompass suppressed ownership evidence.

Third, the Traverse repeatedly identifies the suppressed gun-owner evidence, confirming the Petition's Brady foundation. At PageID 5079, the Traverse states: "Dangerous-ordnance owner information was suppressed… citing Brady." At PageID 5079–5080, it explains that suppressed ownership information "directly negates the element the State was required to prove." At PageID 5080–5081, it invokes *Brady* and *Kyles*, identifying "dangerous-ordnance ownership information" as exculpatory evidence the prosecution had a duty to "learn of" and disclose. At PageID 5082–5083, it states: "Suppressed ownership records… are material since they negate the possession element." And at PageID 5083–5084, Ground One concludes that the State's constructive-possession theory collapses "when the full record is considered, including suppressed ownership records (Attachment A-9, PageID 4599)… Under Brady, the suppressed evidence is material because it negates an essential element." Attachments A-7 and A-9 are repeatedly referenced as suppressed ownership information tied to *Brady*, *Kyles*, *Napue*, *Schlup*, and sufficiency arguments.

Finally, the Traverse ties the suppressed gun-owner evidence to **all four Petition Grounds**. In Ground One, it shows the State lacked proof of dominion, control, access, or knowledge under *Jackson v. Virginia*, relying on suppressed ownership records to demonstrate the ordnance

belonged to a third party. In Ground Two, it ties ownership evidence to the scienter defect and prosecutorial misconduct, showing Petitioner could not "knowingly" possess an ordnance he did not own or access. In Ground Three, it identifies the suppressed gun-owner information as part of the "new evidence" the State withheld, supporting the Crim.R. 33 motions and demonstrating that unavoidable-prevention, excusable-neglect, municipal-acquittal, and double-jeopardy issues all turn on ownership. In Ground Four, it ties ownership evidence to counsel's failures to investigate, advise, or raise Brady material, making the suppressed gun-owner evidence central to the IAC and due-process claims. Across all four Grounds, the suppressed ownership evidence is the factual predicate for insufficiency (Ground One), a scienter-negating element for knowingly (Ground Two), new Brady evidence for Crim.R. 33 litigation (Ground Three), and proof of counsel's Brady/IAC failures (Ground Four). The Traverse does not merely mention the gun-owner evidence—it **operationally depends** on it.

For these reasons, the Magistrate Judge's statement that "there is nothing" supporting a gun-owner Brady claim is **factually impossible** and must be rejected.

The Traverse Ties the Gun-Owner Evidence to All Four Petition Grounds

In Ground One (PageID 193, 204–209), the Traverse uses the suppressed ownership records (A-7, A-9) to show the State lacked proof of dominion, control, access, or knowledge—essential elements under *Jackson v. Virginia*—and relies on the locked safe, lack of access, absence of physical evidence, and municipal acquittal findings to demonstrate the ordnance belonged to a third party, making the insufficiency claim impossible to evaluate without the ownership evidence. In Ground Two (PageID 195–196), which challenges the jury's "knowingly" finding under R.C. 2923.17(A), the Traverse ties the suppressed ownership evidence directly to the

scienter defect, arguing Petitioner could not knowingly possess an ordnance he did not own, did not access, and did not know was present, and further uses the ownership evidence to expose prosecutorial misconduct and errant factual inferences. In Ground Three (PageID 196–200), which repeatedly cites *Brady v. Maryland* and *Ashe v. Swenson*, the Traverse identifies the suppressed gun-owner information as part of the "new evidence" the State withheld, supporting the Crim.R. 33 motions and demonstrating that unavoidable-prevention, excusable-neglect, municipal-acquittal, and double-jeopardy factual-preclusion issues all turn on who owned and controlled the ordnance. In Ground Four (PageID 200–203), alleging ineffective assistance and unfair-trial violations, the Traverse ties the suppressed ownership evidence to counsel's failures to investigate, advise, or raise Brady material, and Ground Four explicitly pleads *Brady* at PageID 201 and 203, making the gun-owner evidence central to its IAC and due-process claims. Across all four Grounds, the suppressed ownership evidence serves as the factual predicate for insufficiency (Ground One), a scienter-negating element for knowingly (Ground Two), new Brady evidence for Crim.R. 33 litigation (Ground Three), and proof of counsel's Brady/IAC failures (Ground Four). The Traverse does not merely mention the gun-owner evidence—it operationally depends on it—making the Magistrate Judge's statement that "there is nothing" supporting a gun-owner Brady claim factually impossible.

The Traverse is part of the operative pleading. Under Fed. R. Civ. P. 8(b) and 15(c), a habeas Traverse functions as an amendment and clarification of the Petition, and its factual allegations must be considered when applying liberal-construction principles to pro se filings. Because the Traverse repeatedly identifies suppressed gun-owner information as Brady material and ties that evidence to each Petition Ground, the Magistrate Judge's conclusion that "there is nothing" supporting a gun-owner Brady claim is factually impossible.

III. The State-Court Record Confirms the Gun-Owner Claim's Factual Predicate

The gun-owner Brady claim is further grounded in the state-court record:

- A formal **Demand for Discovery** on May 7, 2015 (Attachment A-7, PageID 4576) sought dangerous-ordnance owner information.
- Subsequent **public-records efforts** and FOIA/FOIP requests, documented in **Attachment A-9 (PageID 4599 / 4425)**, show Petitioner's repeated attempts to obtain suppressed gun-owner records after the State refused to produce them.

These efforts are part of the same Brady claim: the State's suppression of gun-owner information material to the possession element.

IV. Liberal Construction Requires Recognition of the Gun-Owner Brady Claim

Taken together, the Amended Petition (PageID **196**) and the Traverse (PageID **5079–5084**) plainly present:

- **a Brady claim based on suppressed dangerous-ordnance ownership information;**
- **tied to Attachments A-7 discovery request in the docket and A-9;**
- **tied to the possession element and constructive-possession theory;**
- **supported by *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Napue v. Illinois*, 360 U.S. 264 (1959); *Giglio v. United States*, 405 U.S. 150 (1972); and *Schlup v. Delo*, 513 U.S. 298 (1995).**

Under **Haines v. Kerner**, 404 U.S. 519, 520–21 (1972) (per curiam), **Franklin v. Rose**, 765 F.2d 82, 84–85 (6th Cir. 1985), and **Jourdan v. Jabe**, 951 F.2d 108, 110 (6th Cir. 1991), the Court

must construe pro se habeas pleadings according to their **substance**, not their form. When properly construed, the Petition and Traverse together allege that the State suppressed exculpatory ownership evidence that directly negates the essential possession element of R.C. 2923.17(A). The Magistrate Judge's conclusion that "nothing" in the filings can be liberally construed as a gun-owner Brady claim (ECF 103, PageID 5449) is therefore **clearly erroneous** and should be rejected.

OBJECTION 4: The Magistrate Judge Applied the Wrong Legal Standard — Brady Materiality Does Not Require a "Complete Defense"

The Magistrate Judge denied expansion because *"Not being the registered owner… does not provide a 'complete defense'"* (ECF 103, PageID 5450). This standard is legally incorrect and flips the burden of *Brady v. Maryland*.

By requiring Exhibit A-9 to single-handedly establish a "complete defense" as a threshold condition for admission, the Magistrate Judge applied an unconstitutionally high standard that blocks federal review of suppressed evidence. Under *Brady*, *Kyles*, *Wearry*, and *Turner*, constitutional materiality does **not** require a petitioner to present an ironclad standalone defense to the charge, nor does it require conclusive proof of absolute innocence. Materiality requires only a **reasonable probability of a different result**—meaning evidence that undermines confidence in the state's case or chips away at an essential element must be considered.

The Magistrate Judge erred by evaluating Exhibit A-9 in a total vacuum. As argued directly on the face of Petitioner's Traverse (**Doc. 63, PageID 4547, 4599**), the State's conviction theory depended entirely on a fragile inference of exclusive constructive possession.

When Exhibit A-9 is read in tandem with **Attachment F (PageID 4643)**, the State's case completely collapses:

- **Attachment F (Municipal Court Transcript, p. 27, 30, 41)** establishes that you did not live in, own, or control the premises. The responding officer explicitly admitted under cross-examination that the police had *no document, mail, lease, or utility responsibility records* connecting Petitioner to the property. The record shows the structure was an abandoned, unsecured building with open rear access used by squatters.
- **Exhibit A-9 (DOJ/ATF Records Request)** establishes that official federal gun-trace data exists demonstrating a specific third party held superior legal registration and responsibility for that weapon.

Exhibit A-9 does not need to be a "complete defense" on its own face. By providing the missing identity of the true owner, it intersects with the total lack of residency proven in **Attachment F** to directly gut the essential elements of **dominion, control, and knowledge** required under *Jackson v. Virginia*. By demanding a "complete defense" at the expansion stage, the Magistrate Judge legally blocked evidence that directly demonstrates a constitutional miscarriage of justice under *Wearry* and *Turner*.

OBJECTION 5: The Magistrate Judge Clearly Erred in Concluding A-9 "Proves Nothing" — A-9 Is Classic Brady/Kyles/Napue/§ 2254(d)(2) Suppression Evidence

The Magistrate Judge rejected A-9 because it does not single-handedly disprove possession. This completely misstates its legal purpose. Exhibit A-9 explicitly establishes four crucial facts:

1. The federal gun-trace data explicitly exists.
2. The State had exclusive legal access to it while blocking discovery.
3. **Petitioner diligently attempted to obtain it via federal administrative channels.**
4. **The State did not provide these records during state court discovery.**

The Magistrate Judge's conclusion that Exhibit A-9 'proves nothing' completely mischaracterizes the structural framework of the claim as argued in Petitioner's Traverse (**Doc. 63, PageID 4547, 4599**). Record evidence from the state proceedings already establishes that the dangerous ordnance was found inside a small, locked carrier safe to which Petitioner had no key, no access, and no connecting physical data (**Doc. 63, PageID 4643**). Exhibit A-9 provides the critical, missing factual link to this defense by proving that official federal gun-trace data exists demonstrating a third party had superior access, control, and exclusive legal responsibility for that weapon. By showcasing that the State had exclusive statutory access to this trace data while actively withholding it, Exhibit A-9 directly undermines the essential elements of **dominion and control** and **knowledge** required to prove constructive possession under *Jackson v. Virginia* by replacing the State's speculative inferences with concrete federal statutory documentation. Under *Jackson*, a conviction violates due process when the record supports only speculation rather than proof beyond a reasonable doubt, and Exhibit A-9 functions as the evidentiary wedge that breaks the State's circumstantial chain. The trial record shows the firearm was locked inside a small

carrier safe on the second floor of a residence you did not live in, did not control, and could not access, yet the State inferred dominion without proving any ability to open the container. Exhibit A-9 contains formal DOJ correspondence confirming that federal gun-trace data exists for this specific firearm (Serial No. 81-0001983), identifying a third party as the legal owner and registrant; that superior legal title legally blocks any inference that you exercised control over the safe's contents. The same exhibit also eliminates scienter: due process requires proof that you knew the characteristics making the M-10 a dangerous ordnance, but the weapon was hidden in a locked safe inside a disordered residence with multiple occupants, and the State relied solely on proximity to infer knowledge. By documenting that the ordnance belonged to another individual, Exhibit A-9 provides a rational alternative explanation for the weapon's presence that excludes you entirely, severing the circumstantial bridge the State used to infer awareness. Because DOJ trace data is restricted to law enforcement under 5 U.S.C. § 552(b)(3), the State had exclusive access to this information and suppressed it, creating a false impression prohibited under **Napue v. Illinois**. When Exhibit A-9 is considered alongside the trial transcripts, the State's case collapses from circumstantial evidence into speculation: a third party held superior ownership, you lacked any physical means to access the locked container, and no rational trier of fact could find the essential elements of dominion or knowledge beyond a reasonable doubt under *Jackson v. Virginia*.

Under *In re **Wogenstahl***, 902 F.3d 628–29, and *Brumfield v. Cain*, 576 U.S. 305 (2015), when the State blocks or suppresses factual development, that suppression itself renders the State's factual findings unreliable for purposes of federal review, because a federal court cannot defer to conclusions built on an incomplete or manipulated record. Both cases hold that when the State prevents a defendant from obtaining or presenting material evidence, the resulting factual gaps

are attributed to the State—not the petitioner—and the federal court is justified in expanding the record under **Rule 7**to correct the distortion. In other words, once the State's obstruction makes its factual determinations untrustworthy, federal courts may—and must—permit additional evidence to be added so that the sufficiency and constitutional claims can be evaluated on a complete and accurate factual foundation.

CONCLUSION & RELIEF SOUGHT

Petitioner has now supplied the controlling post-2011 Supreme Court and Sixth Circuit authority required for proper Rule 7 analysis and has corrected the procedural omission acknowledged in the Introduction. Because the Traverse expressly relies on suppressed gun-owner information as material *Brady* evidence, and because Exhibit A-9 is necessary for meaningful review of the Traverse under Rule 72(b), the Magistrate Judge's denial of expansion is clearly erroneous and contrary to law. The Magistrate Judge misapplied *Pinholster*, overlooked the Petition's explicit and implicit *Brady* foundations, and disregarded Judge Black's prior discretionary ruling authorizing full consideration of Attachments A-2, A-3, A-7, and A-8. Exhibit A-9 stands in the identical procedural posture and must be treated consistently.

Accordingly, Petitioner respectfully requests that District Judge Black:

1. **Overrule** the Magistrate Judge's July 16, 2026 Decision and Order (ECF No. 103);
2. **Expand the record to include Exhibit A-9**, which the Traverse identifies as suppressed *Brady* material central to Petitioner's *Brady*, *Kyles*, *Napue*, *Giglio*, *Schlup*, and *Jackson* arguments;

3. **Order Respondent to produce the complete ATF Form 3310.12 or trace-data records** for the M-10 (Mac-10) .45 caliber dangerous ordnance (Serial No. 81-0001983), which remain in the State's exclusive control and are directly relevant to the ownership and possession issues raised in the Traverse;
4. **Conduct de novo review** under Rule 72(b), applying 28 U.S.C. § 2254(d)(2), *Brady*, *Kyles*, *Napue*, *Wearry*, *Turner*, *Hill*, and *Wogenstahl* to the corrected legal framework and complete evidentiary record.

Respectfully submitted,
/s/ Buddy Eugene Struckman
Petitioner, Pro Se
1550 Warvel Road #B
Hamilton, Ohio 45013

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing Petitioner's Objections was served upon Respondent's counsel, the Ohio Attorney General, Criminal Justice Section, 30 E. Broad Street, 23rd Floor, Columbus, Ohio 43215, via U.S. Mail, postage prepaid, on this 19 day of July, 2026.

Respectfully submitted,
/s/ Buddy Eugene Struckman
Petitioner, Pro Se
1550 Warvel Road #B
Hamilton, Ohio 45013